Supreme Court of the United States

No. 116.

October Term, 1916.

FERNAND VAUGHAN GASQUET,
Plaintiff in Error,

versus

GEORGE F. LAPEYRE AND J. MARTIAL LAPEYRE,
Defendants in Error.

Brief on Behalf of Defendants in Error in Opposition to the Motion of Plaintiff in Error to Advance and Consolidate with this Case, the Case of Fernand Vaughan Gasquet, Appellant, v. Charles Payne Fenner, Testamentary Executor, et als, Appellees, No. 656 of the Docket, October Term, 1916.

May It Please The Court:

The motion under consideration should properly have been made, it seems to us, in No. 656, the case which it is desired to advance and consolidate with this case.

The record in No. 656 has not yet been printed, and this case has not yet been called.

The plaintiff in error in this case is the same person who is appellant in No. 656, but the defendants in error in this case, and appellees in No. 656 are different persons.

A motion to dismiss or affirm this case has been made by defendants in error and is to be presented to this Court on Monday, November 6, 1916, notice having been served on counsel for plaintiff in error on Saturday, October 14, 1916, as will appear from the said motion and affidavit of service on file in this Court.

The motion to dismiss is based upon the absence of any Federal questions to support jurisdiction, and the motion to affirm on their unsubstantiality, if jurisdicton be held to exist.

The plaintiff in error in this case was interdicted by judgment of the Cvil District Court of the Parish of Orleans (R. pp. 8 and 9); this judgment was affirmed by the Supreme Court of Louisiana on January 25, 1915 (R., pp. 30 and 31); on February 8, 1915, Gasquet applied for a rehearing and thereafter, on February 19, 1915, filed an ex parte proceeding in the Probate Court of Shelby County, Tennessee (of which State he claimed to have become a resident since the judgment of interdiction of the Civil District Court) asking that his sanity be investgated and passed upon, and judgment was rendered by the Shelby County Court adjudging him sane (R. p. 41). Gasquet then filed a certified copy of these proceedings in the Supreme Court of Louisiana on March 4, 1915, while his application for a rehearing was under consideration, and,

invoking the full faith and credit clause of the Federal Constitution in support of the judgment of the Tennessee Court, moved to abate and dismiss or remand the proceeding pending in the Supreme Court of Louisiana. This motion was "denied" without comment, and without passing on the Federal question (R. p. 50).

Gasquet sued out a writ of error to the Supreme Court of Louisiana, and brought the case (this case) to this Court.

Some time thereafter, Gasquet brought suit in the United States District Court for the Eastern District of Louisiana against Fenner, the executor of his mother's estate, and his two sisters, his only co-heirs, all residents of Louisiana. He claimed to be a citizen of Tennessee and to be **sui juris** by virtue of the above recited judgment of the Court of Shelby County, Tennessee, for which he invoked the full faith and credit clause of the Federal Constitution, and asked for a partition of his mother's estate, an accounting from the executor, a settlement of accounts with his co-heirs and delivery to him of his share.

The defendants contested his citizenship of Tennessee, and the jurisdiction of the Court on that ground, on the ground of his interdiction, and also because the executor was an officer of the State Court, the estate under administration in the Probate Court, the executor accountable to the Court of his appointment alone, the impossibility, under the laws of Louisiana, of the executor's delivering the property in his possession, and obtaining his discharge from the Probate Court except in a contradictory proceeding therein with all of the heirs including Gas-

quet who, as an interdict, could not stand in judgment. The defendants claimed that possession of all of the property of Gasquet's mother was vested in the executor by the laws of Louisiana and by the terms of the decedent's will, that the executor being an officer of the Probate Court his possession was the possession of the Probate Court which could not be disturbed by the Federal Court, and averred the impossibility of appointing a curator or guardian to Gasquet who could stand in judgment for Gasquet in the settlement of the estate, because the writ of error to this Court had stayed further proceedings in execution of the judgment of interdiction. The United States District Court held it was without jurisdiction to entertain a suit of that character against the executor and Gasquet's co-heirs, even conceding Gasquet's citizenship of Tennessee.

Gasquet then appealed this last case which bears the number 656 of the docket of this Court for this October term, and it is this case, No. 656, which he asks to consolidate and advance to be tried with the present case bearing the number 116.

It is manifest that this motion cannot be entertained because of the pendency of the motion to dismiss or affirm, and because it is possible to decide this case without disposing of any of the questions in No. 656, and also because even if successful in this case, the other questions at issue in No. 656 would have to be passed upon, for No. 656 involved not only his status as an interdict, but also the jurisdiction of the United States District Court to entertain a suit of like character brought by a citizen of Tennessee not under interdiction.

To state our contention more clearly: the theory of Gasquet's motion to advance and consolidate No. 656 with this case, is that in both cases he has set up the judgment of the Shelby County, Tennessee, Court, and invoked the full faith and credit clause of the Constitution, and that both cases, therefore, present an identical question which he assumes to be the controlling question in both cases.

We answer that in this case the validity of the decision of the Supreme Court of Louisiana is not dependent upon the validity or invalidity of the Tennessee judgment; that the Supreme Court of Louisiana paid no attention to the Tennessee judgment, and did not even refer to it in its opinion and decree, but decided the case on Louisiana law, and on the facts. We also answer that the asserted Federal question having been raised in the Supreme Court of Louisiana only after it had rendered its judgment was raised too late and not having been considered or passed upon by the Supreme Court of Louisiana is not an issue in the case, and cannot be entertained by this Court.

We answer further, that the case in the United States District Court on appeal here as No. 656, involves not only the validity and effect of the Tennessee judgment, but also the jurisdiction of that Court on other grounds entirely independent of the Tennessee judgment.

We submit, therefore, that the motion to advance and consolidate asks this Court to hear and determine at the same time two cases involving different questions which cannot be properly considered at the same time, and the motion does not show special and peculiar circum-

stances, as required by Paragraph 7 of Rule 26 of this Court, and we respectfully pray that the motion be refused. **Poindexter v. Greenhow, 109 U. S., 63, 64.**

GEORGE DENEGRE,

VICTOR LEOVY,

HENRY H. CHAFFE,

For Defendants in Error, George F. Lapeyre and J. Martial Lapeyre.